Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF NEUTRAL TANDEM

Neutral Tandem respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("*NPRM*") released on February 9, 2011 (FCC 11-13) in the above-listed dockets. Neutral Tandem's comments will focus on two points:

First, competition in the market to provide tandem transit services for local traffic exists and continues to grow. This competition has brought real benefits to the telecommunications marketplace. These benefits include not only lower prices and better service for carriers, but innovative features that can help address other areas of concern identified within the *NPRM*. For example, Neutral Tandem and other carriers offer services that allow carriers to deliver traffic seamlessly on an IP-to-IP basis, or between networks using legacy TDM-based technology and

IP-based networks.[1] The Commission should avoid adopting regulations that could hinder this competition and the benefits it brings.

Second, competition also exists in the market to provide intermediate tandem transit services for access/non-local traffic. This competition has had the same impact as competition in the market for local traffic – lower prices, better service, and innovative products. As the Commission works toward reform of originating and terminating access charges, it must take care not to adopt regulations that would inadvertently stifle the competitive market to provide intermediate tandem transit services for access traffic.

I. THE COMMISSION SHOULD NOT UNDERMINE LOCAL TANDEM TRANSIT COMPETITION WITH TELRIC PRICE REGULATION.

As the *NPRM* observes, local tandem transit service involves "two carriers that are not directly interconnected exchang[ing] non-access traffic by routing the traffic through an intermediary carrier's network."[2] Parties have commented on the market for local tandem transit service in the past, and the *NPRM* finds that "[m]ore recently, the record in this proceeding indicates that a competitive market for transit services exists."[3]

In light of "changes in the transit market," the Commission has invited parties to "refresh the record with regard to the need for the Commission to regulate transiting service, and the Commission's authority to do so."[4] As the Commission notes, new rules related to transit service should only be adopted if they "advance the goals of the Act."[5]

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[1] *See NPRM* ¶¶ 678-679 (discussing interconnection issues associated with IP-to-IP interconnection and traffic exchange).
[2] *NPRM* ¶ 683.
[3] *NPRM* ¶ 683
[4] *NPRM* ¶ 683.
[5] *NPRM* ¶ 683.

As discussed below, local tandem transit competition is widespread. Neutral Tandem and other carriers provide viable alternatives for competitive carriers wishing to exchange traffic with other carriers without directly connecting their networks or using the ILECs' transit service. This competition has led to lower prices, better service, and innovative solutions for carriers seeking to route their telecommunications traffic.

Some carriers may ask the Commission to impose TELRIC-based pricing regulations on local tandem transit services provided by ILECs. Imposing such regulations would have a detrimental impact on the ongoing development of competition in this market and on the development of next-generation networks by the carriers participating in this market.

A. Local Tandem Transit Competition Has Brought About Lower Prices, Better Service, and Innovative Solutions.

Neutral Tandem is the leading competitive (*i.e.*, non-ILEC) provider of local tandem transit service in the United States. Neutral Tandem has the ability to route local tandem transit traffic between more than 500,000,000 telephone numbers. Neutral Tandem currently provides service in each of the 48 contiguous states and Puerto Rico. Neutral Tandem provides service in 189 of the 197 LATAs nationwide and is continuing to expand to areas not currently served.

Neutral Tandem's ubiquitous alternative tandem network has brought substantial benefits to competitive carriers, and to the PSTN as a whole. For carriers, Neutral Tandem has brought lower transit costs, simplified interconnection arrangements, and extremely reliable service. Neutral Tandem also has provided originating carriers with end-to-end traffic management, freeing those carriers to focus on better serving their end-users. Neutral Tandem has provided terminating carriers with superior billing records and greater visibility and clarity regarding the traffic that is being sent to their networks, thus reducing terminating carriers' problems with "phantom traffic."

The existence of alternatives to ILEC tandem networks has provided benefits to the PSTN as well. As the New York Public Service Commission has found, "an independent tandem in turn furthers the development of facilities-based competition among wireless, cable, and landline telephony, by offering the providers of all such services an economically advantageous alternative to the [ILEC] tandem."[6] The New York Commission also found that "the redundancy resulting from alternative tandem switching options enhances the diversity and reliability of the public switched telephone network."[7] An alternative tandem option "provides clear diversity and reliability advantages as compared with relying only on an ILEC's tandem switch maintained solely at the ILEC's location."[8] The New York Commission noted that the objective of enhancing diversity and reliability within the PSTN has "consistently been recognized on several occasions, particularly as a response to lessons of the September 11, 2001 attacks and Hurricane Katrina."[9]

Although Neutral Tandem was the first carrier to provide local tandem transit services as an alternative to the ILECs on a widespread basis, carriers seeking such services now have several options. A number of other wholesale carriers currently provide local tandem transit service in competition with Neutral Tandem throughout part or much of the country. Originating and terminating carriers also continue to have the option to directly connect their networks, any time they decide that such direct connection is cost-justified.

Rates for local tandem transit service have decreased substantially over the past several years. When Neutral Tandem commenced service, it typically offered discounts of 20-25% off

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[6] Case No. 07-C-0233, *Petition of Neutral Tandem – New York, LLC for Interconnection with Level 3 Communications*, Order *Preventing* Service Disruption and Requiring Continuation of Interim Interconnection, at 9 (June 22, 2007).
[7] *Id.*, at 10.
[8] *Id.*, at 10-11.
[9] *Id.*, at 10.

of the ILEC's rates. Neutral Tandem's rates have decreased every year for the past several years. Overall, Neutral Tandem's average local tandem transit rates decreased more than ***REDACTED*** from 2007 to 2010, including a year-over-year decline of more than ***REDACTED*** between 2009 and 2010. The market for local tandem transit service is competitive, and it is becoming more competitive.

Neutral Tandem also notes that at least one of the advances local tandem transit competition has helped bring about relates to another issue of importance to the Commission. Specifically, the issue of how carriers should exchange traffic on an IP-to-IP basis, and between legacy TDM-based networks and next-generation IP-based networks, has been and will continue to be argued by numerous parties.[10] Utilizing next-generation technology, Neutral Tandem currently offers carriers the ability to exchange traffic seamlessly on an IP-to-IP basis, as well as between TDM-based and IP-based networks. As a result, the amount of traffic Neutral Tandem receives in IP format has grown substantially. Other carriers report the ability to offer the same service.[11] As the Commission considers the competing arguments related to interconnection requirements applicable to the delivery of IP-based traffic, both with other IP-based networks and with TDM-based networks, it may wish to keep in mind that competitive solutions exist in the marketplace to help carriers address this issue.

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[10] *See NPRM* ¶¶ 678-679 (discussing interconnection issues associated with IP-to-IP interconnection and traffic exchange).

[11] *See, e.g.*, April 1, 2011 Comments of HyperCube Telecom, LLC, p. 2 & p. 6 n.13. As the Commission has noted, IP-based interconnection leads to significant cost savings and operational efficiencies. *NPRM* ¶ 506.

B. Adoption of TELRIC Price Regulation for ILEC Local Tandem Transit Service Would Stifle Competition and Inhibit the Development of Next-Generation Tandem Networks.

Some carriers likely will ask the Commission to require ILECs to provide local tandem transit service at TELRIC-based rates.[12] These carriers may argue that they lack viable competitive alternatives to the ILECs' local tandem transit services, but as discussed above, that simply is not the case.

Other carriers may argue that the Commission should require ILECs to provide local tandem transit service at TELRIC-based rates because the service constitutes "interconnection" pursuant to 47 U.S.C. § 251(c)(2). This argument fails as a legal matter.

As the *NPRM* recognizes, local tandem transit service involves the transport of traffic by and through the network of the transit carrier; *i.e.*, the intermediate carrier between the originating and terminating carriers.[13] The Commission has held that "the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks[.]"[14] Thus, the Commission's rules make clear that "interconnection" under Section 251(c)(2) "***does not include*** the transport and termination of traffic."[15]

Consistent with the Commission's rules, multiple federal courts have held that "interconnection" under Section 251(c)(2) of the 1996 Act does not refer to the exchange or delivery of traffic. As the D.C. Circuit put it, "to 'interconnect' and to exchange traffic have distinct meanings . . . [interconnection] refers only to 'facilities and equipment,' not to the

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[12] *NPRM* ¶ 683 n. 1095.
[13] *NPRM* ¶ 683.
[14] *Local Competition Order*, 11 F.C.C.R. 15499, 1996 WL 452885, ¶ 176 (Aug. 8, 1996) (subsequent history omitted).
[15] 47 C.F.R. § 51.5 (emphasis added).

provision of any service."[16] Simply put, local tandem transit service cannot be "interconnection" under Section 251(c)(2) of the Act.

Some carriers may point to the fact that Section 251(c)(2) refers to interconnection being provided "for the transmission and routing of telephone exchange service and exchange access," to support the claim that transit service constitutes "interconnection." 47 U.S.C. § 251(c)(2)(A). But as the Eighth Circuit has recognized, "Congress intended 'for the transmission and routing of telephone exchange service and exchange access' only to describe what the interconnection, the physical link, would be used for. . . . By its own terms, this reference [to interconnection] is to a physical link, between the equipment of the carrier seeking interconnection and the LEC's network."[17] Thus, this argument fails as a legal matter as well.

More fundamentally, apart from the lack of legal justification for imposing TELRIC-based pricing on ILEC local tandem transit service, applying such regulation would be contrary to the competitive goals of the Act. TELRIC-based pricing is intended to apply only to "bottleneck" parts of the ILECs' networks, for which competing carriers can find no substitute.[18]

This limitation on TELRIC pricing furthers Congress's goal of encouraging the development of facilities-based competition. One of the "goal[s] of limiting the requirement of unbundled access at cost to [the] network services that requesting carriers need rather than just want is to wean those carriers from reliance on unbundled network elements, so that fully

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[16] *AT&T Corp. v. FCC*, 317 F.3d 227, 234 (D.C. Cir. 2003); *see also Competitive Telecomms. Ass'n v. FCC*, 117 F.3d 1068, 1071-72 (8th Cir. 1997); *MCIMetro Access Transmission Servs., Inc. v. BellSouth Telecomms., Inc.*, 352 F.3d 872, 879 (4th Cir. 2003) (concluding that interconnection is limited to the physical linking of two networks and does not include the transport and termination of traffic).

[17] *Competitive Telecomms Ass'n*, 117 F.3d at 1071-72; *see also Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008) ("'interconnection' means the physical linking of two networks for the mutual exchange of traffic").

[18] *See, e.g., Illinois Bell Tel. Co. v. Box*, 548 F.3d 607, 611-12 (7th Cir. 2008).

competitive landline networks will be built[.]"[19] As courts have recognized, requiring ILECs to provide network services to competitors at "cost-based" rates can "retard investment, handicap competition detrimentally, and discourage alternative means of achieving the same result that could conceivably enhance competition in the long run."[20] Moreover, "as long as requesting carriers rely on network services supplied by incumbent local exchange carriers, competition is hampered because the services continue to be monopolies and to require regulation."[21]

Local tandem transit service is a competitive success story under the 1996 Act. Using private investment dollars, Neutral Tandem and other carriers have built redundant telecommunications networks, using next-generation technology, that now carry billions of minutes of telecommunications traffic every month. Neutral Tandem alone carried more than 108 billion minutes of traffic on its network in 2010. With respect to local tandem transit service, the Commission can best achieve its stated goals of encouraging investment in next-generation telecommunications networks, and promoting "market-driven" intercarrier compensation policies, by letting the competitive market continue to develop and thrive, and by avoiding inappropriate and stifling price regulation.[22]

II. THE COMMISSION SHOULD NOT APPLY REGULATIONS AIMED AT ORIGINATING AND TERMIATING ACCESS COSTS TO INTERMEDIATE TANDEM TRANSIT SERVICE FOR ACCESS TRAFFIC.

The question of how best to reform originating and terminating access charges is among the most important and contentious issue the Commission will be addressing in this proceeding.

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[19] *Id.* at 610 (internal quotation marks omitted).

[20] *Verizon New England, Inc. v. Maine Pub. Util. Comm'n*, 509 F.3d 1, 9 (1st Cir. 2007); *see also United States Telecom Ass'n v. FCC*, 359 F.3d 554, 573, 580 (D.C. Cir. 2004).

[21] *Box*, 548 F.3d at 610.

[22] *See NPRM* ¶¶ 10, 490. The *NPRM* also notes that the Commission previously sought comment on a proposal to make transit providers financially liable for traffic they carry in some instances. *NPRM* ¶ 683 n. 1097. The Commission's proposed phantom traffic rules do not adopt that proposal, and Neutral Tandem agrees that the Commission's rules should not do so.

Neutral Tandem's comments on this issue are aimed at emphasizing the distinction between the network ***end office*** function (*i.e.*, the service provided to deliver access traffic to or from a carrier's own end-user), and the ***intermediate tandem transit*** function (*i.e.*, the service that connects access traffic between originating and terminating carriers whose networks are not directly connected).

The Commission long has recognized that charges for the end-office access function are appropriately subject to price regulation, even when the carrier serving the end-user is not an ILEC, because the carrier providing the access service has a bottleneck to its own end user.[23] By contrast, and as with local tandem transit, a robust competitive market exists to provide the ***intermediate tandem transit*** function to connect carriers that are not directly interconnected. Neutral Tandem and other carriers (in some instances, but not always, carriers that also provide local tandem transit services) provide these services throughout the country.

These intermediate tandem transit services play an important role in the delivery of traffic throughout the PSTN, including access traffic. Carriers choose to use intermediate tandem transit services to deliver their traffic only when it makes sense for them to do so from an economic and a network perspective. In other words, intermediate tandem transit services are used when it is more efficient for originating and terminating carriers to deliver their traffic through a tandem provider, than it is for the carriers to deliver that traffic through direct connections. These services thus enhance the efficiency of traffic delivery throughout the PSTN.

As with the market for local tandem transit service, competition in the market for intermediate tandem transit service for access traffic has resulted in lower prices and more

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[23] *See Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report & Order & Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶¶ 31-34 (2001).

choices for originating and terminating carriers. The average rate Neutral Tandem charges for intermediate tandem transit service for access traffic decreased more than ***REDACTED*** between 2007 and 2010, including a year-over-year decline of more than ***REDACTED*** between 2009 and 2010. The benefits described above related to IP-to-IP traffic exchange and the exchange of traffic between IP-based and TDM-based networks, also apply to the exchange of access traffic.

The Commission also has made clear that carriers' ability to recover lost access revenues from their end-users must be taken into account as the Commission crafts access reform.[24] Unlike originating and terminating carriers, intermediate tandem transit carriers do not have an end-user associated with the traffic they deliver, so their only source of cost recovery and revenue for the services they provide is the revenue they obtain from the originating and/or terminating carriers. This underscores the importance of not undermining the competitive market for this service through price regulation reform aimed at addressing a different set of carrier and customer relationships.

If the Commission adopts rules that preclude intermediate tandem transit providers from recovering appropriate compensation for their services, providers would have little incentive to invest the resources necessary to develop and maintain the ability to deliver this traffic. This would diminish the options that originating and terminating carriers have for delivering their traffic. It also would necessitate inefficient network expense, as originating and terminating carriers establish myriad direct connections that they have not, at present, found it efficient to establish. Such a result would be wildly inconsistent with the Commission's stated goal of promoting "market-driven" intercarrier compensation policies.[25]

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[24] *NPRM* ¶¶ 573-584.
[25] *NPRM* ¶¶ 10, 490.

As it moves forward with access charge reform, the Commission should recognize, and take into account, the critical distinction between the end-office functions performed by originating and terminating carriers when they deliver access traffic to or from their end-users, and the intermediate tandem transit function provided by carriers that connect the networks of originating and terminating carriers that are not themselves directly connected.

Respectfully submitted,
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